

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10  
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11  
HA-05 TRSE-00 /071 W  
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R 171515Z JUL 78  
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TO SECSTATE WASHDC 4482  
AMEMBASSY BONN  
INFO USMISSION USBERLIN  
AMCONSUL BREMEN  
AMCONSUL DUSSELDORF  
AMCONSUL HAMBURG  
AMCONSUL MUNICH  
AMCONSUL FRANKFURT BY POUCH  
USCINCEUR VAIHINGEN GE  
CINCUSAREUR HEIDELBERG GE

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USCINCEUR AND CINCUSAREUR FOR POLADS

E.O. 11652: N/A  
TAGS: PINT, GW  
SUBJECT: THE FILBINGER AFFAIR

REF: STUTTGART 1332

1. SUMMARY. STUTTGART COURT HANDED DOWN ITS DECISION JULY 13 IN  
FILBINGER LAWSUIT IN TERMS NOT VERY FLATTERING TO FILBINGER.  
CONTROVERSY OVER THE FILBINGER AFFAIR CONTINUES UNABATED. DESPITE  
APPEAL TO BADEN-WUERTTEMBERG CDU TO CONTINUE TO SUPPORT FILBINGER,  
IT IS NOT YET CLEAR HOW MUCH APPEAL THIS HAS FOR THE PARTY  
LEADERSHIP -- PARTICULARLY LOTHAR SPAETH -- AND THE RANK AND FILE.  
SPAETH IS CRITICAL OF KOHL AS WISHY-WASHY FOR NOT BEING ABLE  
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TO MAKE UP HIS MIND ON WHETHER FILBINGER SHOULD STAY ON OR GO.  
ROMMEL HAS HINTED THAT HE MIGHT BE READY TO STEP DOWN AS  
STUTTGART'S LORD MAYOR (I.E., SUCCEED FILBINGER AS MINISTER-  
PRESIDENT). DREGGER HAS SPOKEN OUT AGAINST HARM THE FILBINGER  
AFFAIR COULD DO THE CDU AND GDR PARTY ORGAN NEUES DEUTSCHLAND  
HAS ALSO NOW CHIMED IN TO CONDEMN BONN FOR ITS POSITION ON HUMAN  
RIGHTS ABROAD WHILE TOLERATING "NAZI EXECUTIONERS" LIKE FILBINGER

AT HOME. END SUMMARY.

2. AS THE CONTROVERSY OVER THE "FILBINGER AFFAIR" CONTINUES UNABATED IN THE STUTTGART AND THE NATIONAL PRESS, THE VERDICT HANDED DOWN BY THE STUTTGART COURT JULY 13 IN THE FILBINGER LAWSUIT AGAINST ROLF HOCHHUT AND DIE ZEIT HAS ALREADY ALMOST BEEN OVERTAKEN BY EVENTS. THE COURT'S RULING CERTAINLY DID NOT HELP FILBINGER, BUT THE CONTROVERSY SURROUNDING THE MAN TODAY NO LONGER FOCUSSES SPECIFICALLY ON HIS ACTIONS UNDER THE NAZI REGIME BUT ON THE MANNER IN WHICH HE HAS DEFENDED HIMSELF AND TO WHAT EXTENT HIS CONTINUATION IN OFFICE MAY BE AN EMBARRASSMENT TO THE CDU AND TO THE NATIM ITS RULING THE COURT REAFFIRMED ITS EARLIER INITIAL INJUNCTION ENJOINING HOCHHUT FROM ASSERTING THAT FILBINGER HAD BEEN PROTECTED BY A CONSPIRACY OF SILENCE. THE COURT RULED THAT HOCHHUT WAS WITHIN HIS RIGHTS IN CALLING FILBINGER A "TERRIBLE LAWYER," HOWEVER, SINCE SUCH A DESCRIPTION, WHILE CRITICAL, STEMMED FROM AN APPRECIATION OF TECHNICAL FACTORS AND WAS THUS TO BE CONSIDERED NEITHER INSULTING NOR UNLAWFUL. THE COURT SAID THAT IT HAD NOT BEEN NECESSARY TO DELVE INTO FILBINGER'S ROLE IN THE OTHER CASES INVOLVING DEATH SENTENCES IN WHICH HE HAD BEEN INVOLVED SINCE THE FACTS ALREADY SUBMITTED BY THE DEFENSE HAD BEEN ADEQUATE TO ENABLE THE COURT TO REACH ITS OPINION. THE COURT THEN ADDRESSED ITSELF TO FILBINGER'S ROLE IN THE GROEGER AND PETZOLD CASES. ITS OPINION WAS NOT FLATTERING TO FILBINGER.

4. IN THE CASE OF GROEGER, WHO WAS SENTENCED TO DEATH AND EXECUTED, LIMITED OFFICIAL USE

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THE COURT FOUND THAT FILBINGER, AS PROSECUTOR, HAD BEEN GUILTY OF UNSEEMLY HASTE. ASSIGNED TO THE CASE ONLY A FEW DAYS BEFORE THE TRIAL HE COULD HAVE ENGAGED IN DELAYING TACTICS, BUT DID NOT DO SO; HE HAD THE POWER TO SET ASIDE THE SENTENCE, BUT DID NOT DO SO; HE ORDERED THE EXECUTION TO BE HELD THE VERY NEXT DAY AFTER RECEIVING FORMAL CONFIRMATION OF THE SENTENCE. THE LEGALITY OF ALL THIS, RULED THE STUTTGART COURT, WAS OPEN TO QUESTION. THE STUTTGART COURT HELD THAT FILBINGER'S HANDLING OF THE CASE AGAINST PETZOLD -- PUNISHED FOR INSUBORDINATION WHILE IN A BRITISH POW CAMP AFTER THE END OF THE WAR -- INDEED JUSTIFIED THE OPINION THAT HE HAD BEEN A "TERRIBLE LAWYER." DESPITE FILBINGER'S PROFESSED ANTI-NAZI SENTIMENTS AND THE FACT HE WAS NO LONGER UNDER PRESSURE FROM THE NAZI REGIME, FILBINGER METED OUT A STIFF SENTENCE AS IF THE NAZI REGIME HAD STILL BEEN IN POWER. THE SENTENCE, RULED THE STUTTGART COURT, HAD BEEN EXCESSIVE.

5. FILBINGER WAS CONDEMNED TO PAY TWO THIRDS OF THE COURT COSTS. HE HAS ANNOUNCED THAT HE WILL NOT APPEAL.

6. IN A FRONT PAGE EDITORIAL ON JULY 14, THE STUTTGARTER NACHRICHTEN, ON RECORD ALREADY AS ASKING FOR FILBINGER'S RESIGNATION, SAW THE COURT DECISION AS BOTH A LEGAL AND POLITICAL

DEFEAT FOR FILBINGER AND CONSIDERED IT WAS NOW ONLY A MATTER OF TIME BEFORE FILBINGER WAS OBLIGED TO RESIGN. THE BADEN-WUERTTEMBERG CDU LEADERSHIP HAD TO SAY SOMETHING AFTER THE COURT VERDICT AND IT FELL TO LOTHAR SPAETH, INTERIOR MINISTER, TO SPEAK OUT, IN HIS CAPACITY AS DEPUTY LAND CHAIRMAN OF THE PARTY. HE HELD A PRESS CONFERENCE ON JULY 14 IN WHICH HE DEFENDED FILBINGER AFTER A FASHION, ARGUING THAT FILBINGER'S MANY YEARS OF SERVICE FOR BADEN-WUERTTEMBERG MORE THAN OFFSET THE FEW "MISTAKES" HE MAY HAVE MADE. WHEN ASKED WHETHER FILBINGER WOULD STAY ON AS MINISTER-PRESIDENT, SPAETH SAID THAT "FOR THE TIME BEING" HE FELT FILBINGER WOULD STAY ON. SPAETH ANNOUNCED HE HAD THAT SAME DAY SET A LETTER TO ALL CDU SECTIONS IN BADEN-WUERTTEMBERG URGING CONTINUED SUPPORT FOR FILBINGER.

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R 171515Z JUL 78  
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7. WE HAD OCCASION TO TALK WITH SPAETH AT SOME LENGTH ON JULY 14 AFTER HIS PRESS CONFERENCE AND HE WILLINGLY CONFESSED THAT AT THE PRESS CONFERENCE AND IN THE LETTER TO THE CDU MEMBERSHIP HE HAD DIMPLY BEEN GOING THROUGH THE MOTIONS OF WHAT HAD BEEN EXPECTED OF HIM. IN REALITY, HE WAS HIGHLY CRITICAL OF FILBINGER'S HANDLING OF THE WHOLE BUSINESS FROM THE BEGINNING. AFTER REMARKING HE HAD BEEN ON THE PHONE SEVERAL TIMES WITH HELMUT KOHL TO DISCUSS FILBINGER'S FATE, SPAETH DEPLORED WHAT HE CALLED KOHL'S WISHY-WASHY INABILITY TO MAKE UP HIS MIND. FROM THIS WE SURMISED (A) THAT KOHL HAD NOT EXCLUDED FILBINGER MIGHT HAVE TO GO AND (B) THAT SPAETH HIMSELF SEEMED TO BE LEANING IN FAVOR OF FILBINGER OUSTER. (WHEN WE COMMENTED SOLEMNLY TO SPAETH THAT HIS OWN ROLE IN ALL THIS WAS OF COURSE VERY DELICATE SINCE HE IS LIMITED OFFICIAL USE

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MENTIONED PROMINENTLY AS THE MOST LIKELY SUCCESSOR TO FILBINGER, SPAETH SMIRKED CONTENTEDLY.)

8. SPAETH HAD CONTRASTED KOHL UNFAVORABLY WITH HELMUT SCHIMT --"A MAN WHO WOULD HAVE BEEN ABLE TO MAKE UP HIS MIND RIGHT AWAY ON A MATTER LIKE THIS" -- AND SO WE HAVE NOTED WITH INTEREST IN THE LOCAL PRESS THE REPORT THAT AT THE END OF LAST WEEK (AFTER OUR TALK WITH SPAETH CITED ABOVE) SCHMIDT MENTIONED THE FILBINGER AFFAIR IN AN INTERVIEW WITH THE NEW YORK TIMES. WE HAVE NOT SEEN THE TEXT, HOWEVER.

9. DER SPIEGEL DEVOTES ANOTHER LONG, CRITICAL ARTICLE TO THE FILBINGER AFFAIR IN THIS WEEK'S ISSUE, ALONG WITH AN EDITORIAL ON THE SUBJECT. THE PRESS ALSO REPORTS REMARKS HOSTILE TO FILBINGER MADE PUBLICLY BY DREGGER OVER THE WEEKEND. IN AN INTERVIEW PUBLISHED IN THE STUTTGARTER NACHRICHTEN ON JULY 17, DREGGER EXPANDS A BIT ON HIS VIEW THAT THE FILBINGER AFFAIR IS NOT USEFUL FOR THE CDU AND HE REPROACHES FILBINGER ESPECIALLY FOR HAVING HIMSELF BROUGHT ON ALL THE CONTROVERSY BY GOING TO COURT INSTEAD OF SIMPLY EXPRESSING REGRET FOR THE PAST AND LETTING EVERYONE FORGET ABOUT IT. SPOKESMAN FOR THE CDU GROUP IN THE BUDESTAG, ON THE OTHER HAND, ARE REPORTED AS EXPRESSING SOME SUPPORT FOR FILBINGER'S POSITION, AND FRANZ JOSEF STRAUSS IS REPORTED AS OF THE VIEW THAT THE "UNREMITTING WITCHHUNT" AGAINST FILBINGER HAS GONE ON LONG ENOUGH.

10. WITHIN BADEN-WUERTTEMBERG DEBATE DOES NOT SEEM TO HAVE BEEN SILENCED IN CDU RANKS, DESPITE FILBINGER'S JULY 8 MEETING WITH PARTY LEADERS (REFTEL) AND SPAETH'S LETTER TO THE PARTY RANK AND FILE (PARA 6 ABOVE). THE PRESS REPORTS ON JULY 17 THAT THE LUDWIGSBURG BRANCH OF THE CDU YOUTH MOVEMENT HAS ISSUED AN OPEN LETTER DEMANDING FILBINGER'S RESIGNATION. THE CALW SECTION OF THE CDU, THE FIRST THUS FAR TO TAKE A PUBLIC POSITION, HAS ANNOUNCED

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THAT IT HAS SENT A LETTER TO FILBINGER EXPRESSING SERIOUS CONCERN OVER EVENTS AND DEMANDING A SHAKEUP AT THE STAATSMINISTERIUM. (COMMENT: IT IS NOT CLEAR FROM PRESS REPORTS WHETHER THE CALW SECTION WANTS FILBINGER TO STEP DOWN OR WANTS CHANGES IN FILBINGER'S STAFF, THOUGH FROM THE CONTEXT IT WOULD APPEAR TO BE THE LATTER.)

11. RECENT SPECULATION OVER WHO MIGHT SUCCEED FILBINGER SHOULD HE STEP DOWN HAS SUGGESTED THAT ROMMEL WOULD NOT BE A SERIOUS CANDIDATE UNTIL 1980, MEANING THAT ROMMEL BACKERS WOULD HAVE TO FIND AN INTERIM CANDIDATE TO SERVE IN THE OFFICE UNTIL ROMMEL WAS READY. ROMMEL HAS CHANGED ALL THAT, HOWEVER, BY INFORMING THE PRESS AT THE END OF LAST WEEK THAT THERE WAS NO GUARANTEE HE WOULD STAY ON AS STUTTGART'S LORD MAYOR UNTIL THE END OF HIS PRESENT TERM IN 1982.

12. ONE OF FILBINGER'S PROBLEMS IN DEFENDING HIMSELF AT THE BAR OF PUBLIC OPINION HAS BEEN THAT HE HAS NOT IN THE PAST BEEN ON THE BEST OF TERMS WITH THE PRESS. HE IS HARDLY LIKELY TO ENDEAR HIMSELF TO THE PRESS BY A CHARGE THAT HAS NOW BEEN MADE ON HIS BEHALF BY STAATSMINISTERIUM STATE-SECRETARY MAYER-VORFELDER TO THE EFFECT THAT GERMAN TV'S SECOND CHANNEL (ARD) HAS BEEN GUILTY OF BIASED REPORTING OF THE FILBINGER AFFAIR. ARD HAS DEMANDED THAT MAYER-VORFELDER SUBSTANTIATE HIS CHARGES.

13. A NEW DEVELOPMENT IS THE REPORT CARRIED IN THE STUTTGART PRESS ON JULY 17 THAT THE GDR PARTY ORGAN "NEUES DEUTSCHLAND" HAS NOW SPOKEN OUT ON THE FILBINGER AFFAIR, CASTIGATING THE FRG FOR ITS POSITION ON HUMAN RIGHTS ABROAD WHEN IT TOLERATES "NAZI EXECUTIONERS" SUCH AS FILBINGER IN PUBLIC OFFICE AT HOME. MILLER

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## Message Attributes

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